

APPEAL NO. 010238

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 11, 2000. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 14th quarter.

The claimant appeals, citing her 53 job contacts during the qualifying period and asserting that she had a good cause exception for failing to make any job searches for two weeks during the qualifying period. The claimant argues that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102(e)) does provide for good cause exception in Rule 130.102(e)(11). The respondent (carrier) responds that the claimant's appeal was not timely (actually adequate) because the appeal does not state when the claimant received the hearing officer's decision, and that the claimant had not challenged certain specific findings which support the hearing officer's decision.

DECISION

Affirmed.

First, we address the carrier's challenges to the claimant's appeal. It is not necessary for the claimant to state when she received the hearing officer's decision because when that fact is not stated, we apply the deemed receipt rule, Rule 102.5(d). Nor do we require an appellant to specifically appeal each and every finding of fact, as long as we can determine which issues have been appealed. In this case, the claimant is appealing the only issue with sufficient specificity to allow us to address the merits of the appeal.

Sections 408.142 and 408.143 and Rule 130.102 set out the statutory and regulatory requirements for entitlement to SIBs. At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with her ability to work. The hearing officer's determination that the claimant's unemployment during the qualifying period for the 14th quarter of SIBs was a direct result of the claimant's impairment from the compensable injury has not been appealed and will not be addressed further.

The parties stipulated to the jurisdictional requirements. The hearing officer found, and the parties agreed, that the qualifying period for the 14th quarter was from April 28 through July 27, 2000. It is undisputed that the claimant has some ability to work with restrictions. The claimant testified regarding the number of job contacts that she made and the hearing officer made unappealed findings that the claimant made 53 job contacts, as documented on the Application for Supplemental Income Benefits (TWCC-52), and that "she completed an application or left a resume at each job contact."

At issue in this case is the fact, as found by the hearing officer, that the claimant did not make any job contacts or job searches during the two-week period from May 19 through June 1, 2000, "as she was out of state attending to the illness of her daughter." The claimant contends that Rule 130.102(e)(11) contains what amounts to a good cause exception, while the carrier asserts there is no good cause exception to the rule. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Following that portion of the rule is a list which includes, but is not limited to, a number of factors which may be considered in "determining whether or not the injured employee has made a good faith effort to obtain employment." That list includes, in part, the number of jobs sought, types of jobs, applications or resumes, education and work experience of the injured employee, any job search plan and "(11) any other relevant factor." The claimant contends that the "other relevant factor" allows a good cause exception. We disagree. The body of Rule 130.102(e) plainly states that an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability every week of the qualifying period. The items listed in Rule 130.102(e)(1) through (10) deal with factors of whether the quality of the job search meets the good faith requirement of Sections 408.142(a) and 408.143 and Rule 130.102(d) rather than providing a good cause exception for not conducting a job search during some weeks of the qualifying period. While there may be some circumstances where the injured employee has a total inability to work in any capacity pursuant to Rule 130.102(d)(4) for some weeks of the qualifying period and would only be required to seek work other weeks under Rule 130.102(e), this is not such a case. See Texas Workers' Compensation Commission Appeal No. 001877, decided September 19, 2000.

The hearing officer did not err in finding that the claimant was not entitled to SIBs for the 14th quarter and his decision is supported by the evidence. Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge